

REMARKS

Initially, Applicants appreciate the Examiner's acknowledgement that claims 2-4 and 18 are free of the prior art as noted on page 4 of the Office Action. Independent claims 2 and 18 have been rewritten solely to place these claims in independent form, however, no modification to the scope thereof has been made (since every dependent claim includes the features of the claims from which it depends). Therefore, no estoppel with respect to claim scope has occurred in claims 2-4 or 18. Claims 2 and 18 have also been amended voluntarily to correct a few antecedent basis issues, such as for the terms height, distance, center, and the like.

Claims 1-20, as amended, and new claims 21-25 are pending for the Examiner's review and consideration. New claims 21 and 24 recite that the center inclusion remains visible, *e.g.*, to a merchant or consumer (Specification at page 11, first full paragraph). New claims 22 and 25 recite that the center inclusion is coated with a confectionery (Specification at page 12, first full paragraph). New claim 23 recites that the center inclusion comprises a single homogeneous body (Specification at page 4, first full paragraph; page 9, third full paragraph). As no new matter has been introduced by these changes or additions, their entry is warranted at this time.

Claims 1, 5-17, and 19-20 were rejected under 35 U.S.C. § 103(a) as being obvious over U.S. Patent No. 4,229,484 to Steels et al. ("Steels") on pages 2-3 of the Office Action. The Office Action states that Steels teaches a process and center filled bars of confectionery material made by successive deposits of shell and filling materials into adjoining cavities of molds moved beneath coaxial depositing nozzles, where the deposits flow together. The Office Action concedes, however, that Steels does not teach the polygonal shapes having angled sides as presently recited, but states that this would have been obvious in the absence of any criticality of the shape.

Steels discloses confectionery products having a pair of side and a pair of end walls, which are effectively "sides" (Col. 2, lines 48-50). Thus, Steels teaches conventional confectioneries having only four sides. The top and bottom are just that--they are not sides. In support of this statement, Applicants submit a definition of the term "side" from Chambers Concise Dictionary & Thesaurus, p. 1139 (2001), which confirms that a "side" forms the outer extent of something, but that it does not include a top or bottom. Furthermore, the term "side" is used distinctly from top and bottom in Steels, and Steels in fact notes that the "base" (*i.e.*, the bottom) is level (FIGS. 5 and 12; Col. 3, lines 44-46). Indeed, Steels' entire teaching is directed to four sided-products formed together as 2 to 4 linked bars, and each figure

illustrates the same four sided formation. Thus, Steels fails to disclose or even suggest a base having five to twelve sides as presently recited in independent claim 1. Moreover, dependent claims 5-6 each recite six, eight, or ten sided products, which Steels also fails to teach. Even assuming that the top surface is incorrectly counted as a side, Steels at best has a base and 5 sides and not six, eight, or ten as presently claimed.

Moreover, Steels discloses forming confectioneries by pouring chocolate shell and soft, extrudable filling materials into a mold before closing the base with more chocolate. Thus, Steels teaches forming a sealed confectionery product where the top and base, along with the four sides, contain the filling material. On the contrary, claim 17 of the present invention surprisingly and unexpectedly uses the angled sides made of the first confectionery material to assist in retaining the center inclusion in the confectionery products. Steels teaches to use shell material to completely envelop its filling (Col. 3, lines 18-23). Thus, Steels fails to suggest arranging the sides to retain the center inclusion formed of second confectionery material, as recited in claim 17. Dependent claim 6 recites a product having at least half its sides angled inwardly to facilitate retaining the center inclusion, which Steels similarly fails to teach.

Dependent claim 9 of the present invention is separately patentable. Steels teaches that its shell material must be materials that will readily fuse together, *e.g.*, chocolate. On the contrary, claim 9 recites that the first confectionery comprises chocolate and one or more of rice puffs, cookie bits, toffee, ground nuts, fruit, or a grain-based cereal product. Steels thus teaches away from using or including these materials in the shell, or outer portion of its confectionery product because they would produce unsightly and weak points, and the center material could leak or affect the stability of the product (Col. 1, lines 37-44).

Further, Steels teaches a flowable, extrudable filling. Indeed, Steels' filling material is described by way of example as chocolate, fudge, nougat, and certain gelatin-based materials (Col. 2, lines 2-4 and 15), and the filling material is flowable based on its ready ability to extruded coaxially with the shell material. Claim 13 of the present invention, however, recites puffed rice as the center inclusion. This material, particularly at the recited dimensions, would not readily flow as required in Steels. Therefore, Steels fails to teach a puffed rice center inclusion having a diameter of about 1.3 cm to about 2 cm, as recited by claim 13. Indeed, Steels cannot use such materials while the present invention surprisingly and unexpectedly can provide entire new classes of center inclusions not available in conventional products like Steels. Moreover, new dependent claim 21 recites that the center inclusion comprises a single homogeneous body, which Steels also cannot provide because of

its processing techniques. Original claim 12 also recites this homogeneous body, along with other features. New dependent claim 22 recites that the center inclusion remains visible, *e.g.*, to a merchant or consumer. Similar to claims 13 and 21, Steels simply cannot provide such a material because its filling must be sealed within the shell material to prevent leakage or unsightly problems (*See, e.g.*, Steels, Col. 1, lines 36-44).

Furthermore, dependent claim 14 recites that the individual base units are connected on at least one side to another base unit. Steels, however, teaches that its adjoining products are connected only at the *base*, *i.e.*, the part that overflows the web 19 and joins the adjacent mold (FIGS. 2, 5, and 9-12; Col. 3, lines 40-47). Thus, Steels fails to disclose or suggest connecting the adjoining units on at least one side, as presently recited by claim 14. For these reasons, the rejection of claims 1, 5-17, and 19-20 under 35 U.S.C. § 103(a) has been overcome and should be reconsidered and withdrawn since no *prima facie* case of obviousness has been stated.

Accordingly, the application is now in condition for allowance, and an early notice to that effect would be appreciated. Should the Examiner not agree, then a personal or telephonic interview is respectfully requested to discuss any remaining issues and expedite the eventual allowance of the claims.

March 2, 2004
Date

Respectfully submitted,

Jeffrey A. Wolfson
Jeffrey A. Wolfson (Reg. No. 42,234)

WINSTON & STRAWN LLP
Customer No. 28765

202-371-5770